

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FERRILL JOSEPH VOLPICELLI,

Petitioner,

vs.

JACK PALMER, *et al.*,

Respondents.

3:10-cv-00005-LRH-VPC

ORDER

This habeas matter under 28 U.S.C. § 2254 comes before the Court following initial review under Rule 4 of the Rules Governing Section 2254 Cases (the “Habeas Rules”) of the petition (#7), following upon review of the state court record exhibits (#16) filed by respondents. Following said review, it would appear that any issues regarding any applicable procedural defenses would be most efficiently resolved following a response by respondents.

IT THEREFORE IS ORDERED that, given the lengthy petition, respondents shall have sixty (60) days from entry of this order within which to answer, or otherwise respond to, the petition, including by motion to dismiss. Any response filed shall comply with the remaining provisions below, which are tailored to this particular case based upon the Court’s screening of the petition and which are entered pursuant to Habeas Rule 4.

IT FURTHER IS ORDERED that any procedural defenses raised by respondents in this case shall be raised together in a single motion to dismiss. Procedural defenses omitted from such motion to dismiss will be subject to potential waiver. Respondents shall not file a response in this case that

1 consolidates their procedural defenses, if any, with their response on the merits, except pursuant to 28
2 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit.

3 IT FURTHER IS ORDERED that, in any answer filed on the merits, respondents shall
4 specifically cite to and address the applicable state court written decision and state court record
5 materials, if any, regarding each claim within the response as to that claim.

6 IT FURTHER IS ORDERED that, with any motion to dismiss or answer filed, respondents shall
7 file copies of any additional state court record materials – over and above those filed at #16 – that are
8 relevant and material to the procedural defenses asserted therein and/or to consideration of the merits
9 of the petitioner’s claims as to which dismissal is sought on the merits, including, but not limited to,
10 any items listed in Rule 5(d) of the Rules Governing Section 2254 Cases that have not been filed
11 previously.

12 IT FURTHER IS ORDERED that any state court record exhibits filed by respondents herein
13 shall be filed with a separate index of exhibits identifying the exhibits by number or letter. The
14 CM/ECF attachments that are filed further shall be identified by the number or numbers (or letter or
15 letters) of the exhibits in the attachment. **The hard copy of any additional state court record**
16 **exhibits shall be forwarded – for this case – to the staff attorneys in Las Vegas, to the attention**
17 **of: “P3.”**

18 IT FURTHER IS ORDERED that petitioner shall have thirty (30) days from service of the
19 answer, motion to dismiss, or other response to file a reply or opposition. The deadline established by
20 this order shall override any shorter deadline in a minute order issued pursuant to the *Klinge* decision.

21 DATED this 12th day of July, 2011.

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25 LARRY R. HICKS
26 UNITED STATES DISTRICT JUDGE
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